Office-Supreme Court, U.S.
FILED
NOV 13 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 512

CLARENCE N. BEACH, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

FORD E. YOUNG, JR.
Attorney for Petitioner
5540 Connecticut Ave., N.W.
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 512

CLARENCE N. BEACH, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. When the United States Court of Appeals for the District of Columbia Circuit has not passed upon the question of "laches" but has ruled that Judgment for the Government of the District of Columbia should commence from the date of the first demand upon now petitioner, can this be said to be such affirmation in part and reversal in part as to not constitute such final judgment as to be reviewable by this Honorable Court by Petition for Writ of Certiorari?

2. Do not any or all of the five major issues debated in the Argument in the Petition for Writ of Certiorari overcome the contention of counsel for respondent to the effect that petitioner was not denied due process of law?

As to Respondent's Counter-Statement of the Case

By taking excerpts from the testimony adduced at the hearings in the Trial Court, counsel for respondent endeavors to paint a picture of a well-fixed father who receives free medical attention, has only his wife for a dependent and who could well afford to pay the award of the Trial Court to the Government of the District of Columbia.

The amount allegedly expended by the District of Columbia for the maintenance and treatment of petitioner's daughter was set forth in the "Petition for Citation Against Responsible Relatives To Show Cause" (R. 4), but was not supported by any evidence at any of the hearings in the Trial Court. Indeed, respondent did not present any witnesses at such hearings.

Counsel for respondent in making a point of petitioner's wife being his only "dependent" disregard the testimony (R. 31-36) about the needs of petitioner's other children, his grandchildren, and his great grandchildren.

Counsel for respondent in making a point of petitioner's eligibility for hospitalization as a veteran of the Spanish-American War disregard the potentiality of medical expenses for petitioner's wife.

Although counsel for respondent do not state any inaccuracy it is necessary to read together the "Statement of the Matter Involved" in the Petition for Writ of Certiorari and the Counter-statement of the case to get the full picture of petitioner and his wife having established a "Pattern of Life" and the respondent endeavoring to completely upset that pattern. It is also significant

that counsel for respondent appears to disregard the fact that had it not been for petitioner's Spanish-American War pension over a period of from 30 to 35 years (R. 15), petitioner's assets would be considerably less than those to which counsel for respondent make reference in their Counter-statement of the Case.

ARGUMENT

I

As to the Contention in Opposition-Brief That the Judgment of the Court of Appeals Is Not a Final Judgment for Purposes of Review on Writ of Certiorari

It is most certainly worthy of note that counsel for respondent, by raising the issue, could not, should this court deny the Petition for Writ of Certiorari on this ground, raise the issue that counsel for petitioner would be estopped to petition this honorable court for Writ of Certiorari should the decision of the United States District Court for the District of Columbia, pursuant to the opinion of the United States Court of Appeals for the District of Columbia Circuit be adverse to petitioner. On the other hand, had counsel for petitioner willingly gone back to the District Court, counsel for respondent would certainly have raised the defense of estoppel had the decision been unfavorable to petitioner and had counsel for petitioner then endeavored to petition this honorable court for a Writ of Certiorari.

Thus, counsel for respondent now seek to wield a double-edged sword. But the weakness in their argument is that the opinion of the United States Court of Appeals for the District of Columbia Circuit, in this case, is completely distinguishable from cases cited by counsel for respondent which were reversed in part and affirmed in part in that, in this case, the Court of Appeals brushed aside the defense of laches but held that the liability of now petitioner

> . . . should be made retroactive only from the time

the District authorities took such steps with respect to the father (meaning petitioner) as amounted to a demand upon him for contribution" (page 8a, Appendix to Petition for Writ of Certiorari).

It is respectfully submitted that although the judgment of the Court of Appeals, in this case, used the language "affirmed in part and vacated in part," this case would come within the purview of the language which follows the quotation from *Republic Natural Gas Co.* v. *State of Oklahoma*, 334 U.S. 62, 67, 92 L. Ed. 1212, 1219, which counsel for respondent have set forth on the page numbered 5 of their Opposition Brief.

Said language, page 68, is as follows:

> On the other hand, if nothing more than a ministerial act remains to be done, such as the entry of a judgment upon a mandate, the decree is regarded as concluding the case and is immediately reviewable. *Board of Commissioners* v. *Lucas*, 93 U.S. 108; *Mower* v. *Fletcher*, 114 U.S. 127.
>
> There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing.

In the case at bar, all that remained pursuant to the opinion of the Court of Appeals was to find out when the District authorities took such steps as amounted to a demand upon now petitioner for contribution and to enter judgment accordingly.

The case of *Bruce, Administrator of Tobin, et al.* v. *Tobin*, 245 U.S. 18, 62 L. Ed. 123, is easily distinguishable from this case in that in the *Tobin* case the Supreme Court of South Dakota had set aside the action of the trial court rejecting the claim of the father of decedent, had not specifically fixed the amount of the father's recovery and had directed a new trial to accomplish

that result, whereas, in this case the opinion of the Court of Appeals left open only the question of when demand was first brought to the attention of now petitioner. The difference, it is respectfully submitted, is vast. In the *Tobin* case a new trial was required. In this case the issue of time of first demand upon now petitioner was the only issue referred back to the trial court.

Again, in the case of *Martinez* v. *International Banking Corporation*, 220 U.S. 214, 55 L. Ed. 438, the entire question of the amount of the recovery, in a very complicated fact situation, had been referred back from the Supreme Court of the Philippine Islands to the trial court. This case was especially complex in that two cases involving the same litigants and subject matter, having been filed on different legal and equitable grounds, and counter-claims in each such case, had been consolidated for trial and had been reviewed together by the Supreme Court of the Philippine Islands, but only one such case had been sent back to the trial court for determination of the amount of the recovery. The questions of consolidation and amount in controversy, irrelevant to this case, were also important factors in the *Martinez* case.

The procedural aspects of the case of *Earle* v. *Myers*, 207 U.S. 244, 52 L. Ed. 191, are interesting because in said case counsel both came to this Honorable Court and went back to the auditor of the now United States District Court for the District of Columbia and thereafter came to this Honorable Court with an entirely different appeal which had also gone through the Court of Appeals. This was, of course, before the requirement of a Petition for a Writ of Certiorari. The *Earle* case is distinguishable from this case in that it involved the restatement of an account in accordance with instructions from the Court of Appeals. It is respectfully submitted, by analogy, that this case should not have to go back to the trial court for determination of when demand was made upon now peti-

tioner by the Government of the District of Columbia for contribution for the support of petitioner's daughter but that, counsel for respondent having contended that same is the proper procedure, the *Earle* case furnishes excellent precedent to the effect that this Petition for Writ of Certiorari should be held in abeyance to be determined with a later case to be brought up through the Court of Appeals should same become necessary or desirable after a ruling by the trial court as to when such demand was made.

The principal point remains, however, that all legal and equitable issues have been determined by the opinion of the Court of Appeals and are set forth in the Petition for Writ of Certiorari filed herein. The question of how much retroactive payment would be assessed against petitioner by the trial court is irrelevant to these legal and equitable issues. It is, therefore, respectfully submitted that this case does have sufficient finality, at this time, for the determination of this Honorable Court.

It is respectfully submitted that the reference to 4 C.J.S., Appeal and Error, pages 506 and 507, is irrelevant to this case for the reason that the tests of the granting of a Writ of Certiorari by this Honorable Court are different from the tests of appeal generally. The crux of this issue with regard to this case is that nothing remained for the trial court to do other than to fix the time of first demand upon now petitioner for contribution for support of his daughter. If the verbage of the citation were relevant, therefore, it would be helpful to petitioner and not to respondent.

II

As to the Contention in Opposition Brief No Question of Substance is Presented for Review

The cases cited on page 7 of the Brief for Respondent in Opposition, namely, *Hart* v. *Commissioners of the District of Columbia*, 81 U.S. App. D.C. 154, 155 F. 2d 876 (1946); *Fitzhugh* v. *District of Columbia*, 71 U.S. App. D.C. 290, 109 F. 2d 837 (1940), and *Baker* v. *District of Columbia*, 39 App. D.C. 42 (1912), all involve the liability of the *patient's estate* to the Government of the District of Columbia and not the question of whether a father of a patient when served with process within the District of Columbia can be so held liable.

The crux of *Hart* v. *Commissioners*, *supra*, is set forth on pages 25 and 26 of the Petition for Writ of Certiorari.

The case of *Fitzhugh* v. *District of Columbia*, *supra*, established the proposition that the claim of the District of Columbia could be filed in probate proceedings against the estate of a former patient at the St. Elizabeth's Hospital, after the Committee for said patient had been discharged.

The case of *Baker* v. *District of Columbia*, *supra*, merely established the law to the effect that the District of Columbia could recover from the estate of a patient retroactive to the date of the enactment of the statute authorizing such recovery.

None of these cases involved a *Father* of a patient. None of those cases were the subject of opinions of this Honorable Court. It was inaccurate, therefore, for counsel for respondent to have based their argument on a contention that this case arose out of a statute of purely local application and significance as did the three cases cited. Each of the five major points in the argument of the Petition for Writ of Certiorari, it is respectfully submitted, goes beyond any such contention.

It is respectfully submitted that the quotations on the page numbered 8 of the Brief for Respondent in Opposition from the opinion of the Court of Appeals should not furnish the basis of whether or not questions of substance are presented for review but that the entire opinion, based upon the points made in the Petition for Writ of Certiorari should be considered. Elaboration would be repetitious of the argument in the Petition for Writ of Certiorari.

Nor do the cases cited by counsel for respondent apply to the points made in the argument in the Petition for Writ of Certiorari.

The condemnation of land by the Government of the District of Columbia, which was the subject of *American Security and Trust Company* v. *District of Columbia*, 224 U.S. 491, 56 L. Ed. 856, was by its nature a matter of purely local concern.

The case of *Del Vecchio, et al.* v. *Bowers*, 296 U.S. 280, 80 L. Ed. 229, involved the Longshoremen's and Harbor Workers' Compensation Act which this Honorable Court held to be national in scope though constituting the Workmen's Compensation Law for the District of Columbia.

The case of *District of Columbia* v. *Pace*, 320 U.S. 698, 88 L. Ed. 408, determined that the then Court of Appeals for the District of Columbia had the power to review and reverse the decisions of the Board of Tax Appeals for the District of Columbia.

It is true that in these cases this Honorable Court has stated that "we will not ordinarily review decisions of the United States Court of Appeals which are based upon statutes so limited (meaning confined to the District of Columbia) or which declare the common law of the District of Columbia." Again, it would be repetitious of the major points of the argument in the Petition for Writ of Certiorari to point out wherein there is so much more law and equity involved in this case than the mere applica-

tion of a local statute confined in its operation to the District of Columbia.

The citation of the case of *United Surety Company* v. *American Fruit Product Company*, 238 U.S. 140; 59 L.Ed. 1238, is obviously aimed at attempted rebuttal of the first major point in the argument of the Petition for Writ of Certiorari, namely, that Section 318 of Title 21 of the Code of Laws for the District of Columbia violates and is incompatible with that part of the Fifth Amendment regarding deprivation of personal property without due process of law. The basis of this contention of said statute being unconstitutional is set forth under said first major heading in the Petition for Writ of Certiorari so that elaboration here would be repetitious, except to say that the proper application of the doctrine of "due process of law" is as a "fundamental principle of justice", that now petitioner, under all the facts and circumstances of this case, would be seriously hurt should he be required to pay the judgment of the trial court should it be determined that first correspondence constituted demand upon him, that the enforcement of such judgment against petitioner would be so oppressive to petitioner as to render the statute as so arbitrary and unreasonable in classification as to violate and be incompatible with the "fundamental principle of justice" of the due process clause of the Fifth Amendment, so that it is, obviously, grossly erroneous for counsel for respondent to now attempt to cause this Petition for Writ of Certiorari to be rejected, denied and refused upon a contention that this constitutional point is a mere pretext put forward to open other questions that otherwise could not come here. The distinction between cases involving the Fourteenth Amendment and this case has been pointed out in the Petition for Writ of Certiorari. Heretofore, counsel for respondent has opposed the contentions of counsel for petitioner by relying upon decisions of state courts upholding statutes similar to Section 318 of Title 21 of the D.C. Code as not violative of the

Fourteenth Amendment (even though two such cases afforded a trial by jury and in one of them the maximum liability was $20.00 per month). The Court of Appeals having relied upon decisions of state courts upholding similar statutes as not violative of the due process clause of the Fourteenth Amendment, counsel for respondent now endeavors to belittle the Constitutional argument of counsel for petitioner and make it appear that same is a mere pretext put forward in order to open up questions that could not otherwise come here. It is worthy of note that while counsel for petitioner cannot re-argue the remaining four major points of the Petition for Writ of Certiorari here, each of them does present a question worthy of consideration by this Honorable Court in the prevention of gross injustice.

CONCLUSION

The question of immunity of Veteran's Pension monies, as argued under the point numbered IV of the Petition for Writ of Certiorari above, it is respectfully submitted, meets the tests of Rule 19 (b) of this Honorable Court. Taken together, it is respectfully submitted, the five major points in the argument in the Petition for Writ of Certiorari most certainly cause this case to be worthy of review by this Honorable Court.

Respectfully submitted,

FORD E. YOUNG, JR.
Attorney for Petitioner
5540 Connecticut Ave., N.W.
Washington, D. C.